

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARA LESLIE ALEXANDER,)	
et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 96-2123
)	97-1288
)	(RCL)
FEDERAL BUREAU OF)	
INVESTIGATION, et al.,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

This matter comes before the court on Plaintiffs' Motion [826] to Compel Further Responses From the Executive Office of the President to Plaintiffs' Fifth Set of Requests for the Production of Documents. Upon consideration of this motion, and the opposition and reply thereto, the court will GRANT IN PART AND DENY IN PART plaintiffs' motion, as discussed and ordered below.

I. Background

The underlying allegations in this case arise from what has become popularly known as "Filegate." Plaintiffs allege that their privacy interests were violated when the FBI improperly handed over to the White House hundreds of FBI files of former political appointees and government employees from the Reagan and Bush Administrations.

This particular dispute revolves around the plaintiffs' fifth request for the production of documents served on the Executive Office of the President ("EOP") on May 13, 1999. This request was as follows:

[A]ll documents, including but not limited to listings of telephone records, facsimile logs, electronic mail, and diskettes, or other recordings, which refer or relate in any way to the answers to the interrogatories served [on the EOP] or which in any way contain information relevant to . . . these interrogatories. These interrogatories are . . . Plaintiffs' First Set of Interrogatories to the [EOP] Pursuant to Court Order of April 13, 1998, and Plaintiffs' Second [sic]¹ Set of Interrogatories to the EOP.

See Plaintiffs' Fifth Document Request at 7 (emphasis added).

The EOP served its responses and produced documents on July 16, 1999. The only documents produced by the EOP, however, were those upon which the EOP relied when answering the interrogatories. EOP Opposition at 2. The EOP objected to the plaintiffs' request for documents "relating or referring" to their answers to interrogatories as vague and overbroad.

In their motion to compel, the plaintiffs argue that "it is highly unlikely" that the EOP has produced all documents it relied on when answering the first and second set of interrogatories. Plaintiffs further argue that they are entitled to not only those documents the EOP relied upon, but also any documents that refer or

¹Plaintiffs are in fact referring to their Third Set of Interrogatories to the EOP.

relate in any way to the EOP's interrogatory answers. Accordingly, the plaintiffs request that the court compel the production of all documents relating or referring to the EOP's answers to the interrogatories, as well as those documents relied upon, that have not previously been produced. Furthermore, the plaintiffs request that, for any documents withheld based on privilege, the EOP be compelled to produce a privilege log establishing the bases for their claims.

II. Analysis

In general, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." FED. R. CIV P. 26(b)(1). Federal Rule 34, which governs requests for the production of documents during discovery, states that such requests "shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity." FED. R. CIV P. 34(b).

The EOP argues that plaintiffs' request for all documents that "refer or relate to," "or in any way contain information relevant to" the EOP's interrogatory answers, is vague and overbroad. The EOP further argues that the request fails to describe the documents requested with reasonable particularity, as required by

Federal Rule 34, because it forces the EOP to guess what the plaintiffs would deem relevant.

The court agrees with the EOP's argument to the extent that plaintiffs request all documents that "in any way contain information relevant to" the EOP's interrogatory answers. The court finds this request to be vague and overly broad, as it would require the EOP to determine what other information the plaintiffs would consider to be relevant to that information already supplied by the EOP in their interrogatory answers. See Alexander v. FBI, 186 F.R.D. 21, 36 (D.D.C. 1998) ("[I]t is not the role of the witness to define the scope of a document request.")

The EOP also objects to the plaintiffs' request for those documents that "refer or relate to" the EOP's interrogatory answers as impermissibly vague and overbroad. In support of its argument, the EOP cites this court's prior ruling that plaintiffs' request for all documents related to "Filegate" or this case in general was impermissibly vague and overbroad. See id. at 35. In that ruling, however, it was not the phrase "all documents or things which refer or relate to" that the court found to be overly broad and vague. In fact, the court expressly approved of another request which included such a phrase. See id. (stating that plaintiffs' request for records "relating to" communications with Terry Lenzner concerning access to and disclosure of FBI files of Reagan and Bush appointees "could not be more specific.") Rather it was the

subject of the request - "this case or Filegate in general" - that the court found to be vague and overly broad. Id.

The court finds the subject of the present request, however, to be clear and specific. This request does not require the EOP to determine what particular issues the plaintiffs think relevant and important. Those issues are clearly laid out in the plaintiffs' request for interrogatories. Therefore, the EOP need only to look at the information contained within their interrogatory answers to determine what documents need to be produced.

As to the EOP's claim that the plaintiffs' request is overbroad, this court has already ruled on the relevance of the underlying interrogatories. See Alexander v. FBI, Civ. No. 96-2123, Memorandum and Order (D.D.C. March 29, 2000)(re: First Set of Interrogatories); Alexander v. FBI, Civ. No. 96-2123, Memorandum and Order (D.D.C. March 29, 2000)(re: Third Set of Interrogatories). Clearly, the EOP need not provide documents relating to those questions that the court found irrelevant and undiscoverable. For those remaining questions, however, given that the court found the information sought to be relevant, it follows that documents relating to such information are also relevant.

In fact, what the EOP really seems to be arguing is that the plaintiffs' request is overly burdensome. See EOP Opposition at 3 ("Plaintiffs' Fifth Set of Requests is actually not one request but at least 283 requests for documents, concerning over 100 pages of EOP's responses to plaintiffs' interrogatories.") In order to

support such an objection, however, the EOP must make a specific, detailed showing of the burden such a search would require. See Alexander v. FBI, Civil No. 96-2123, Memorandum and Order at 6 (D.D.C. March 29, 2000); see also Chubb Integrated Systems Ltd. v. Nat'l Bank of Washington, 103 F.R.D. 52, 60-61 (D.D.C. 1984) ("An objection must show specifically how an interrogatory is overly broad, burdensome or oppressive, by submitting affidavits or offering evidence which reveals the nature of the burden.") The EOP does not even attempt to make such a showing in this instance. Thus, any objection to the plaintiffs' request based on undue burden must fail.

The EOP contends that their production of all documents upon which they relied when answering interrogatories is sufficient and includes all information to which the plaintiffs are entitled. A specific example given by the EOP in its opposition, however, belies this fact. In its opposition, the EOP states that it is now serving on the plaintiffs, "[i]n an effort to narrow areas of disagreement and without waiving its objections" Bruce Lindsey's notes with regard to his 1997 conversation with Linda Tripp "even though it did not rely upon them for purposes of responding to plaintiffs' interrogatories." EOP Opposition at 10 n.11. The EOP discussed this conversation between Lindsey and Tripp in its response to Interrogatory no. 15 of the first set of interrogatories, which asked Bruce Lindsey to describe any and all

knowledge about the release or use of documents from Kathleen Willey to the President. The EOP responded in part:

Mr. Lindsey remembers that in the summer of 1997, he had a conversation with Linda Tripp, during which she advised him that Kathleen Willey had spoken to Michael Isikoff about an alleged encounter with the President, but that based on Ms. Tripp's knowledge, Ms. Willey's account was not true.

EOP Responses to First Set of Interrogatories at 22.

Given this response, Lindsey's notes, even if they were not specifically relied on the EOP when drafting its response, should have been at least consulted. The plaintiffs are clearly entitled to such relevant documents. The EOP can not simply pick and choose what documents it must produce by pronouncing those that it produced to be the only ones it "relied upon" for its answers. Furthermore, under the EOP's narrow definition of responsive documents, the EOP also need not produce any documents that may contradict their answers, as they would not have "relied upon" these documents. Clearly, however, this is not the case. Plaintiffs are entitled to any documents that refute the EOP's responses, as such information would be relevant to the pending action and likely to lead to the discovery of admissible evidence.

Accordingly, the court finds that the EOP has not produced all responsive documents. The plaintiffs' request for those documents referring to relating to the EOP's interrogatory responses was not vague or overbroad. Thus, the EOP must produce all documents that

in any way pertain to the information included in the EOP's responses to first and third sets of interrogatories.

Next, the plaintiffs argue that the EOP did not even produce all of the documents upon which it relied, and move the court to compel the EOP to produce any such documents previously withheld. They argue that if any documents were withheld based on privilege, the EOP should be compelled to produce a privilege log, setting forth certain information about each document withheld in order to establish a basis for the claim asserted. The EOP responded, however, that, as it stated in its response, "all documents that EOP in fact relied upon" when answering interrogatories were either produced, identified by Bates-stamp number (for documents previously produced to plaintiffs), or listed in the document response. EOP Response at 8-9 (emphasis added); see EOP Opposition at 6. Thus, no documents were withheld based on privilege. See EOP Opposition at 2.

In order to sustain their motion to compel as to those documents relied upon, the plaintiffs must demonstrate that such documents do, in fact, exist and are being unlawfully withheld. See Ayala v. Tapia, 1991 WL 241873 at *2 (D.D.C. Nov. 1, 1991)(denying motion to compel production of portions of a diary because the party seeking production could "identify specific information that. . . [had] not been turned over.") Plaintiffs fail to provide evidence that any documents relied on by the EOP were actually withheld in this case. Rather, they simply enumerate

various meetings and conversations discussed in the EOP's interrogatory answers for which no documents were produced and speculate that such documents must exist. In response, the EOP stated that it reconfirmed that the relevant individuals - Ann Lewis, Mike McCurry, Bruce Lindsey, Rahm Emanuel, and Sidney Blumenthal - have no responsive documents regarding the information enumerated in the plaintiffs' motion. Plaintiffs then seek, in their reply, to compel those five individuals to represent under oath that they have no responsive documents under oath. As plaintiffs have not provided any evidence that such documents are, in fact, being withheld, however, their request is denied.

III. Conclusion

For the reasons stated above, the court HEREBY ORDERS that Plaintiffs' Motion [826] to Compel Further Responses Regarding from the EOP to Plaintiffs' Fifth Set of Requests for the Production of Documents is GRANTED IN PART and DENIED IN PART. The EOP shall, within 20 days of this date, provide all documents referring or relating to their answers to the Plaintiffs' First and Third Sets of Interrogatories.

SO ORDERED.

Royce C. Lamberth
United States District Court

Date:

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARA LESLIE ALEXANDER,)	
et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 96-2123
)	(RCL)
FEDERAL BUREAU OF)	
INVESTIGATION, et al.,)	
)	
Defendants.)	
_____)	

ORDER

A hearing was held in this matter on April 27, 2000 to discuss the issue of performing a search of Executive Office of the President ("EOP") e-mails as part of discovery in this case. Based on the representations of the parties at that hearing, it is hereby

ORDERED that the plaintiffs shall file a supplemental briefing regarding the search of those e-mails that have been transferred to the Automated Records Management System ("ARMS"), and thus are currently capable of being word-searched on that system no later than May 2, 2000, and the EOP shall file their reply no later than May 5, 2000. It is further

ORDERED that the plaintiffs shall file supplemental brief regarding the search of all material, including e-mails, hard drives and zip drives, which are not capable of being word-searched on ARMS no later than May 4, 2000, and the EOP shall file their response no later than May 18, 2000. It is further

ORDERED that the plaintiffs' motions for leave to file their third and fourth supplements to their Motion to Compel Production of Documents Regarding Second Request to the EOP [1051, 1066-1, 1066-2] is GRANTED. These motions will be considered in conjunction with the plaintiffs' supplemental briefing regarding the search of the non-ARMS material. It is further

ORDERED that the court will hold in abeyance the plaintiffs' motion for an evidentiary hearing [984-2] and the plaintiffs' motion for an order to show cause concerning the zip drive [1057-1, 1057-2] so as not to interfere with the Department of Justice's criminal investigation into the matter. The court will continue to conduct ex parte, in camera status conferences with the Department of Justice in order to monitor the progress of their criminal investigation.

SO ORDERED.

Royce C. Lamberth
United States District Court

Date: